The learned Deputy contended that P.W.1 had wide powers of arrest under the Emergency (Rubber Control) Regulations, 1949, and that the arrest of the respondent was lawful. He cited the case of *Abdul Hamid* v. *Public Prosecutor*[2]. In my opinion, that case has no application as no question of an illegal arrest was involved as it is in this case. It is true that under section 9 of the Emergency (Rubber Control) Regulations, any police officer could make an arrest for any offence under the Regulations. There is nothing, however, to indicate that the respondent was arrested for an offence under those Regulations. He was not charged with offering a bribe in respect of any such offence. On the other hand, the charge in this case shows unmistakably that the bribe was offered in respect of an offence of buying rubber without licence. I therefore quashed the conviction and ordered that the fine of $100 and the sum of $10 paid by the respondent be refunded to him.

Conviction quashed.

Solicitors: *Sault, Keith Sellar & Co.*

CHOO HONG FAI v. TAN SIAK KERN

[A. C. J. (Adams J.) August 25, 1960]

[J. B. — Civil Appeal No. 2 of 1960]

Practice and Procedure — Pleading — Leave to amend.

As a general rule leave to amend ought not to be refused unless the Court is satisfied that the party applying is acting *mala fide*, or that his blunder has done some injury to the other side which cannot be compensated by payment of costs or otherwise.

Hongkong & Shanghai Banking Corporation v. *Tang Hong* [1] distinguished.

Cases referred to:—

(1) *Hongkong & Shanghai Banking Corporation* v. *Tang Hong* [1959] M.L.J. 51.

(2) *Tildesley* v. *Harper* (1878) 10 Ch. D. 393 at p. 396.

CIVIL APPEAL.

J. D. Donnelly for the appellant.

Omar bin Saleh for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal against the refusal of the learned President of the Sessions Court, Johore Bahru, to allow Counsel for the plaintiff to amend the plaint under the provisions of O. 14 of the Subordinate Court Rules.

It is a little difficult from the proceedings to discover precisely what happened in the lower Court. The action was one for ejectment. On the 10th August, 1959, Messrs. Battenberg and Talma, Solicitors for the plaintiff, of whom the defendant is a sub-tenant, caused to be served on the defendant a notice to quit and deliver up vacant possession of the premises which he occupied. In that notice to quit, there is a statement that the monthly rent of $70.25 is payable in arrear. This statement was repeated in paragraph 2 of the Statement of Claim. The defendant duly filed his Defence and paragraph 2 of the Statement of Defence specifically maintains that the notice to quit is bad in law, but does not say why. But paragraph 3 of the Statement of Defence denies that at the time the notice to quit was served upon the defendant the rent was in arrears for 14 days. On the 26th November, 1959, the case was mentioned before the learned President, and Mr. Donnelly for the plaintiff asked that, if there were a point of law to be argued in respect of the notice to quit, that it be heard on that day. The case was not listed for hearing on that day and Che Omar Saleh for the defendant objected.

The case came on for trial on the 3rd February and Mr. Donnelly outlined the plaintiff's case. At the end of the opening Che Omar Saleh pointed out that it was admitted that the premises fell under the provisions of the Control of Rent Ordinance and a condition precedent to proceedings of this nature by virtue of the provisions of section 12 of that Ordinance is that before ejection proceedings can be taken the rent due must be in arrears for more than 14 days and that, since both the notice to quit and the Statement of Claim recited that the rent was payable in arrears, it clearly must be so payable. In the event, therefore, as the notice was served on the 10th August in respect of the rent for July, at the time the notice to quit was served the rent was not in arrears for 14 days but for 10 days, and therefore no order or judgment for the recovery of the premises could be made.

Mr. Donnelly then asked the Court for leave to amend the pleadings by apparently deleting the words "payable in arrear" from paragraph 2 of the Statement of Claim. Che Omar Salleh replied that he had no objection, but pointed out that the amendment in fact went to the root of the defence. The defendant's case was that the rent was in fact payable in arrears as set out both in the notice to quit and in the Statement of Claim.

The learned President refused leave to amend and dismissed the suit. In support of his action he followed the judgment of Sutherland J. in the *Hongkong & Shanghai Banking Corporation* v. *Tang Hong*[1] on the ground that the defendant would be placed in a worse position than he would have been if the amended pleadings had been delivered in the first instance.

I think the learned President was misled. The general principles are laid down in *Tildesley* v. *Harper*[2] where Bramwell L.J. said:—

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting *mala fide*, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise."

Had paragraph 2 of the pleadings averred that the rent was payable in advance in the first instance, the defendant would have been in exactly the same position as he would be if the amendment were now made. In the *Hongkong & Shanghai Bank case* the facts are different and it must be noted that the issues after the amendment would not have been the same. In the

present case, after the amendment, the issue, namely, was the rent in arrears for 14 days, will be the same.

Although it would appear to me incredibly careless to allow a mistake of this nature to appear in both the notice to quit and the Statement of Claim, and even more incredible that there was no application to amend on the filing of the Statement of Defence, it is, in so far as the pleadings are concerned, not alleged that the mistake was made *mala fide*, and the defendant can be compensated by the terms upon which the Court allows the amendment.

In the circumstances therefore the plaintiff must be given leave to amend the Statement of Claim by deleting the words in brackets in paragraph 2, namely, "payable in arrear".

It seems to me that the plaintiff has brought all this on himself, nor did he take any steps to amend when he received the Statement of Defence although it was obvious what the objection was going to be. The mistake, if it is a mistake, has been repeated twice. The appeal is allowed, and the plaintiff may have leave to amend, but in the circumstances I consider that the plaintiff should pay the costs of this appeal.

Appeal allowed.

Solicitors: *Battenberg & Talma; M. Ismail.*

ONG UP SENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) August 19, 1960]

[Penang — Criminal Appeal No. 19 of 1960]

Gaming — Person found gaming in public place — Possession of cash and dice for playing "blangkas" — Charge with promoting gambling game — Common Gaming Houses Ordinance, 1953, ss.7(2) and 8(1).

Criminal Law and Procedure — Finger-prints of convicted person.

In this case acting on information received the police raided a place at night and there they saw a group of persons apparently gaming near a shed. On seeing the police the persons ran away, but the appellant was apprehended: a handkerchief containing $33.40 was found in his possession together with a single dice. The dice was one of a kind specially marked for the purpose of playing the game known as "blangkas". Other instruments for that game were also found at the scene.

On these facts the appellant was originally charged with being found gaming in a public place contrary to section 7(2) of the Ordinance. However, at the hearing of the case the prosecution produced a new charge charging him with the more serious offence of promoting a gambling game in a public place contrary to section 8(1). Upon that charge he was convicted and fined $500. He appealed.

Held: on the facts of the case there was no evidence to justify a conviction of promoting, as distinct from the lesser offence of gaming in a public place contrary to section 7(2). Conviction under section 8(1) set aside and one under section 7(2) substituted.

Observations on taking and recording finger-prints of convicted persons.

MAGISTRATE'S CRIMINAL APPEAL.

Mrs. P. T. Oon for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): The appellant in this case was originally charged with being found gaming in a public place, contrary to the provisions of section 7(2) of the Common Gaming Houses Ordinance, 1953. At the hearing of the proceedings the prosecution produced a new charge charging him with the more serious offence of promoting a gambling game, to wit, blangkas in a public place, contrary to the provisions fo section 8(1) of the Ordinance. Upon that charge he was convicted and fined the sum of $500. He now appeals against both the conviction and sentence.

The facts of the case were that acting on information received the Police proceeded to a place on the Alma Estate at about 10 o'clock at night and there they saw a group of persons apparently gaming near a zinc shed on the estate. On seeing the Police the persons took to their heels and ran away. The appellant was apprehended and a handkerchief containing the sum of $33.40 was found in his possession, together with a single dice. According to the evidence given before the learned Magistrate, and accepted by him, the dice was of a kind specially marked for the purpose of playing the game known as blangkas. At the scene of the incident were also found other instruments such as a specially marked chart, which made it apparent to the Magistrate, upon the evidence heard by him, that the game of blangkas was, in fact, being played at the time the Police arrived on the scene.

On the sole evidence of the possession of the single dice which was found in the appellant's pocket and the money in his possession, the learned Magistrate convicted him of the charge preferred against him of promoting this game, contrary to the provisions of section 8(1). In doing so, he acted upon the presumption arising out of section 8(2) of the Ordinance, which provides that:—

> "Any person who brings to, or has in his possession at or near, a place where such an offence as aforesaid is committed any instruments or appliances for gaming, shall be presumed, until the contrary is proved, to have promoted the commission of an offence punishable under the last preceding Section."

On the wording of that section, as it stands, it is certainly not clear to me whether the possession of a single dice in the circumstances in which it was found upon the offender made him guilty, in the absence of any proof by him to the contrary, of the more serious offence of promoting the game, rather than of simply taking part in the game which would be an offence covered by section 7(2) of the Ordinance. The learned Magistrate disbelieved the appellant's story as to what he was doing at the scene of the incident, and there was undoubtedly evidence which certainly justified him in so disbelieving the appellant's story. But on the facts of the case I am not entirely satisfied that the evidence, and the presumption upon which the learned Magistrate acted, justified a conviction of promoting, as distinct from the lesser offence of gaming in a public place contrary to the provisions of section 7(2) of the Ordinance. I therefore set aside the